

1. PAYMENT METHOD

Payments under this Agreement will be made based on a Cost Plus Fixed Fee for Profit (CPFF) payment method. Consultant will be paid for acceptable actual services performed in accordance with Section 4. ALLOWABLE COSTS, plus a fixed fee for profit in accordance with Section 6. FIXED FEE FOR PROFIT.

2. MAXIMUM AGREEMENT AMOUNTS

The following are the maximum payment amounts established under this Agreement for each category of cost. Consultant shall not be paid for any cost that exceeds these amounts without prior written approval from State. The "indirect costs and direct expenses" category may be adjusted to exceed the amount listed below; however, any adjustment will not increase the total agreement amount.

AMOUNT	CATEGORY
\$ XXXXX	for actual direct labor costs
\$ XXXXX	for indirect costs and direct expenses
<u>\$ XXXXX</u>	for a fixed fee for profit
\$ XXXXX	total agreement amount

3. SUBCONSULTANT OVER-RUNS AND UNDER-RUNS

Over-run: Consultant shall require all subconsultants to notify Consultant any time it has been determined that a subconsultant's costs will exceed its fee estimate (over-run). Consultant must provide an acceptable justification for the over-run and obtain State's written approval before incurring any cost over-run expenses. If approved by State, a supplemental agreement will be prepared to either shift funds from Consultant to its subconsultant(s) or increase the contract maximum. Contract increases will be considered when additional scope of services are required.

Under-run: If the amount of any subconsultant's cost is less than its fee estimate (under-run), Consultant understands that the amount of the under-run will be subtracted from the total compensation to be paid to Consultant under this Agreement, unless State gives prior written approval and, if necessary, approval from Federal Highway Administration (FHWA). If Consultant wishes to shift the balance of subconsultant's fee to Consultant, justification must be provided to State. Shifting of funds may be approved by State with no increase to the fixed fee for profit unless additional scope of services is required by Consultant, and additional fee is necessary to complete the work under this Agreement.

4. ALLOWABLE COSTS

Allowable costs are direct labor costs, indirect costs, and direct non-labor costs as defined below which Consultant has incurred within 90 days before State has received Consultant's invoice. Costs that Consultant incurred to correct mistakes or errors attributable to Consultant's or Subconsultant's own actions are not allowable costs, even if those costs would not exceed the amounts listed in Section 2. MAXIMUM AGREEMENT AMOUNTS.

A. Direct Labor Costs are the costs Consultant pays its employees for the time they are working directly on the project and are calculated by multiplying the hourly rate of pay by the hours worked (in increments not less than one quarter hour).

- 1) Hourly Rates: **USE FOR NO PREMIUM OVERTIME - DEFAULT**. For hourly employees, the hourly earnings rate shall be the employee's regular hourly pay rate during regular (40) hours of work per pay week. If overtime hours are worked on this project, State will only pay for employee's regular hourly pay rate. State will not pay the premium pay portion of the overtime hours. **END USE FOR NO PREMIUM OVERTIME** **USE FOR PREMIUM OVERTIME** For hourly employees, the hourly earnings rate shall be the employee's regular hourly pay rate during regular (40) hours of work per pay week and up to 150% of the employee's regular hourly pay rate for overtime hours paid to the employee. If an employee is billing time to more than one project, including projects other than for State, the overtime hours should be billed proportionately to all projects. For example, if the consultant's employee worked 30 hours on one project and 20 hours on another project, Consultant would bill 24 hours of straight time and 6 hours overtime for the first project (which is 3/5 of the total time worked) and 16 hours of straight time and 4 hours of overtime on the second project (which is 2/5 of the total time worked).

When premium overtime pay is included as an indirect cost in the Consultant's overhead rate calculation, the Consultant cannot bill premium overtime pay to the project and shall bill the actual regular hourly rate for all hours worked. **END USE FOR PREMIUM OVERTIME**

For salaried employees, the hourly earnings rate shall be the employee's actual hourly rate as recorded in the Consultant's accounting books of record, multiplied by the hours worked.

The Staffing Plan must identify by name all employees of the Consultant who are reasonably expected to provide Services under this Agreement. Reference Staffing Plan Section of this Agreement regarding changes in personnel.

- 2) Time Reports: All hours charged to the project must be documented on time distribution records. The records must clearly indicate the daily number of hours each employee worked on any project or activities for the entire pay period. **Time reports must provide the employee's name and position, dates of service, and a clear, identifying link to the projects; such as project description, project number, control number, and pertinent work phase.** Consultant must establish an adequate system of internal controls to ensure that time charged to projects are accurate and have appropriate supervisory approval.
- B. Indirect Costs (Overhead and FCCM) are the indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with Federal Acquisition Regulations [48 CFR 31 \(Contract Cost Principles and Procedures\)](#). Indirect costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable Indirect Cost Rates (ICR); or if the ICR is unknown or unavailable, Consultant will be allowed to use the most recent provisional ICR approved by State. ~~Increases~~Changes in the ICR that occur during the project period will not be cause for ~~an increase~~a change in the total agreement amount established in Section 2. MAXIMUM AGREEMENT AMOUNTS.
- C. Direct Non-Labor Costs (Direct Expenses) are all necessary, ~~actual~~, properly documented, and allowable costs related to the Consultant completing the Services. All costs must be supported by detailed receipts or invoices, unless otherwise specified below. Direct non-labor costs include, but are not limited to, the following:
- Transportation, mileage, lodging, and meals, subject to limitations specified below; Communication costs; Reproduction and printing costs; Special equipment and materials required for the project and approved by State; Special insurance premiums if required solely for this Agreement; Subconsultant costs; Such other allowable items as approved by State.*
- 1) A non-labor cost charged as a direct cost cannot be included in Consultant's overhead rate. If, for reasons of practicality, Consultant does treat a direct non-labor cost category in its entirety as an overhead cost, then such costs are not eligible to be additionally billed as a direct expense to this project.
 - 2) Costs for subconsultants may not exceed the amounts shown on the attached Consultant's Fee Proposal for each subconsultant unless agreed upon in writing by the Consultant and State. Consultant shall require subconsultant costs to have the same level of documentation as required of Consultant. Consultant must review

subconsultants' invoices and progress reports to ensure they are accurate, include only allowable costs, and has proper documentation before sending to State.

- 3) The following direct non-labor costs (direct expenses) will be reimbursed at actual costs, not to exceed the rates as shown below.

~~(a) Field Expenses — Consultant must provide a breakdown of miscellaneous and field expenses and, when applicable, provide receipts. Non-perishables such as personal toiletries, forks, plates, and such, are not reimbursable unless claimed under sections 4. C. 3) e) (x) and 4. C. 4).~~

- (a) TRANSPORTATION – Automobile rentals, air fares, and taxi/shuttle transportation will be reimbursed at the actual, reasonable cost and, if discounts are applicable, the Consultant shall give State the benefit of all discounts. Itemized receipts must be submitted with invoices. A bank card receipt that displays only the total cost of the transportation expense is not sufficient documentation. Tips must be included in the total fare amount claimed on the travel log form. Tips for complimentary transportation are considered an incidental expense and cannot be claimed as a transportation-related expense.

- (b) MILEAGE – The reimbursement for mileage associated with the use of company owned vehicles will be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately-owned vehicle (POV), is limited to the lesser of:

- (i) The mileage rate that the Consultant reimbursed to the person who submitted the claim for POV use; or
- (ii) The prevailing standard rate as established by the IRS.

NOTE: When Consultant is seeking only reimbursement for mileage, Consultant must itemize travel on NDOT's Travel Log, itemize on invoice, or include a separate mileage log which includes the following information: employee name, vehicle identification, date of travel and miles driven, reimbursement rate and total expenses. The total expenses are to be shown on the invoice as a direct expense. NDOT's Travel log form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.

(c) LODGING – The reimbursement for lodging rates will be limited to the prevailing standard rate as indicated on the U.S. General Services Administration’s (GSA) website at <http://www.gsa.gov/portal/category/100120>. Consultant shall give State the benefit of all lodging discounts. Lodging receipts must be submitted with invoices.

4) Meal and incidental (M&I) expenses will be reimbursed on a per diem basis, not to exceed the rates as shown below. The incidental expenses portion of the per diem rate includes, but is not limited to, courtesy transportation related tips, such as hotel, park and ride, or airport shuttles; and fees and tips to porters, hotel employees, baggage carriers, and flight attendants.

(a) The State per diem rate for the destination of travel is 70% of the applicable Federal GSA per diem rate. The State per diem breakdown amounts for breakfast, lunch, dinner, and incidental expenses are 70% of the Federal GSA per diem breakdown amounts.

(b) The State per diem rate shall be reduced by the State meal breakdown amount(s) for any meal provided by others. Examples include:

- (i) Meals included in a conference or event fee
- (ii) Meals provided by lodging facility
- (iii) Meals purchased by 3rd Party
- (iv) Meals charged directly to and paid for by the State

(c) MULTI-DAY TRAVEL – Travel that includes at least one overnight stay.

- (i) M&I reimbursement on the first and last day of travel will be reduced to 75% of the State per diem rate.
- (ii) Except for a meal provided by others (see 4)(b) above), all meals may be claimed on the first and last day of travel irrespective of the start and stop times for those days.

(d) SAME DAY TRAVEL – Travel that does not include an overnight stay.

- (i) Employee shall not claim reimbursement for a meal that was purchased within 20 miles of the city or town of the employee’s residence or primary work location.
- (ii) M&I reimbursement for same day travel will be reduced to 75% of the State per diem breakdown amounts.
- (iii) The following criteria must be met for Consultant and its employees to be eligible for the M&I reimbursement on same day travel.

- (1) Breakfast - Employee leaves for same day travel at or before 6:30 a.m. or 1-1/2 hours before the employee's shift begins, whichever is earlier, the breakfast rate may be claimed.
- (2) Lunch – No reimbursement is allowed.
- (3) Dinner/Supper – Employee returns from same day travel or work location at or after 7:00 p.m., or 2 hours after the employee's shift ends, whichever is later, the evening meal rate may be claimed.
- (4) Incidental Expenses – No reimbursement is allowed unless the employee is also approved for breakfast or dinner meal expenses.
- (5) The time limitations set forth above do not include the time taken for the meal.

5) EXTENDED STAY/LONG TERM TRAVEL

USE WHEN THERE IS NO EXTENDED STAY ARRANGEMENTS (APARTMENTS)

No extended stay arrangements, such as apartments or weekly/monthly meal reimbursement rates, have been approved. **END NO EXTENDED STAY**

SITUATIONS

USE WHEN EXTENDED STAY ARRANGEMENTS ARE APPROVED

Consultant is allowed to rent temporary housing in lieu of lodging near the project location (<location. i.e. Omaha, NE>) ~~and to submit itemized grocery receipts in lieu of, or in addition to, meal receipts~~ for accommodating staff temporary assigned construction engineering duties associated with the performance of this Agreement. Items such as alcohol and tobacco products are unallowable costs. Items which are commonly provided by motels, hotels and restaurants would be eligible for reimbursement. Consultant will be reimbursed up to \$xxxxx per month, and associated deposit, for long-term living arrangements (i.e. fully furnished apartment with all utilities/services). Reimbursable costs include utilities/services if separate from rental fee. Consultant shall submit lease documents, and, when applicable, utilities/services bill(s), with initial invoice showing actual lease cost, and, when applicable, utilities/services costs, to support the reimbursement amount.

END APPROVED

EXTENDED STAY ARRANGEMENTS

5. INELIGIBLE COSTS

State will not pay for costs incurred prior to the Notice to Proceed date or after the completion deadline date set out in the NOTICE TO PROCEED AND COMPLETION SCHEDULE Section

of this Agreement, unless approved in writing by State. Per Section 4. ALLOWABLE COSTS, State will not pay for costs incurred, but not submitted to State within 90 days of the date incurred. Consultant (including its employees) is assumed to have incurred travel costs on the day travel occurred. Consultant is assumed to have incurred costs from a Subconsultant on the same day the Subconsultant incurred the cost.

6. FIXED FEE FOR PROFIT

- A. The fixed fee for profit amount payable to Consultant is identified in Section 2. MAXIMUM AGREEMENT AMOUNTS. For each invoicing period, the Consultant may invoice State a portion of the fixed fee for profit equal to the sum of the actual direct labor costs and overhead (Indirect Costs, excluding FCCM if applicable) for the period, multiplied by the profit rate of XX.XX%. Upon completion of the services outlined in this Agreement, the Consultant may invoice State any remaining fixed fee for profit not previously invoiced. If all of the services under this Agreement are not completed for any reason, State may decrease the amount of fixed fee for profit based on State's determination of the actual percentage of services completed.
- B. Subconsultants fixed fee for profit (if applicable): Consultant must apply the above provisions regarding fixed fee for profit to all Subconsultant contracts that utilize the cost plus fixed fee (CPFF) payment method. If all of the services allocated to Subconsultant(s) under this agreement are not completed for any reason, the fixed fee for profit paid to Subconsultant(s) must be reduced based on the State's sole determination, or Consultant's determination with State's concurrence, of the actual percentage of services completed by the Subconsultant.

7. INVOICES AND PROGRESS REPORTS

- A. Consultant shall promptly submit invoices to State based on Consultant's billing period but shall not submit more than one invoice per month. Invoices must include all allowable costs, and when applicable, the associated Fee for Profit, for services provided during the billing period. Invoices may also include a request for services provided or costs incurred during a prior billing period, including subconsultant costs, with an explanation for why those costs were not previously included in an invoice, so long as those costs were incurred no more than 90 days prior to State's receipt of the invoice. Accordingly, State retains the sole discretion to not pay for costs incurred that have not been invoiced as provided above.

B. In the event Consultant has incurred otherwise allowable costs, and such costs would exceed the maximum direct labor costs or total agreement amount listed in Section 2. MAXIMUM AGREEMENT AMOUNTS, Consultant shall list such costs on the invoice, but they must be subtracted from the total invoice amount submitted to State for payment.

C. Content of Invoice Package (Presented in this order)

1) Consultant's Invoice:

- (a) The first page of an invoice must identify the company's name and address, invoice number, invoice date, invoicing period (beginning and ending dates of services), and agreement or task order number.
- (b) The invoice and, when applicable, accompanying supporting documentation must identify each employee by name and classification, the hours worked, and the actual labor cost for each employee.
- (c) Direct non-labor expenses:
 - (i) Direct non-labor expenses, other than travel-related expenses, must be itemized and provide a complete description of each item billed along with supporting receipts or invoices.
 - (ii) Travel-related expenses must be summarized and submitted on NDOT Form 163 (see [paragraph 7.C.4](#)) below). Supporting receipts must be submitted with NDOT Form 163 when invoicing for these expenses.
 - (iii) All supporting receipts must be kept as required in Section 18.
- (d) Time Records, as outlined in Section 4. A. 2).
- (e) Subconsultant Services: Consultant shall require subconsultants to provide the same supporting documentation, invoices, and receipts as Consultant is required to submit and retain.

CONSULTANT COST RECORD RETENTION.

- 2) Progress Report: A Progress Report must accompany the invoice package documenting Consultant's work during the service period. If an invoice is not submitted monthly, then a Progress Report must be submitted at least quarterly via email to State's Project Coordinator. All Progress Reports must include, but are not limited to, the following:
- (a) A description of the Services completed for the service period to substantiate the invoiced amount.
 - (b) A description of the Services anticipated for the next service period
 - (c) A list of information Consultant needs from State

(d) Percent of Services completed to date

NOTE: State's Project Coordinator may request more specific information or detail be included in Progress Reports.

- 3) Cost Breakdown Form: Each invoice package must include a current and completed "Cost Breakdown Form" (NDOT Form 162). This form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Utilizing the Cost Breakdown Form helps reduce errors in calculating previously billed amounts and limitations on eligible costs billed.
 - 4) Travel Log: If an invoice contains any travel-related expenses, then a current and completed "Invoice Travel Log" (NDOT Form 163) must be included with the invoice package. This form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Upon pre-approval by State, Consultant may use a substitute Invoice Travel Log provided it documents substantially the same information as the current NDOT Form 163. The Travel Log must document the employee's name, vehicle identification (if applicable), date/time of departure to the project, date/time of return to the headquarters town, locations traveled, and expenses for transportation, meals, and lodging.
 - 5) Mileage Log (when applicable): When Consultant is seeking reimbursement for mileage only, Consultant must itemize travel on NDOT's Travel Log, itemize on invoice, or include a separate mileage log which includes the following: employee name, vehicle identification, date of travel and miles driven, reimbursement rate and total expenses. The total expenses are to be shown on the invoice as a direct expense.
- D. All invoice packages (invoice, progress report, required NDOT Forms, supporting material) must be submitted electronically through State's OnBase Invoice Workflow System for review, approval, and payment. The user guide for the OnBase Invoice Workflow system, along with training videos can be found at <http://dot.nebraska.gov/business-center/consultant/onbase-help/>.
- E. Notice of Public Record: Documents submitted to State, including invoices, supporting documentation, and other information are subject to disclosure by State pursuant to the Nebraska Public Records Act found at Neb. Rev. Stat. § 84-712 et.seq. ACCORDINGLY, CONSULTANT SHALL REDACT OR NOT SUBMIT TO STATE INFORMATION THAT IS CONFIDENTIAL, INCLUDING, BUT NOT LIMITED TO, FINANCIAL INFORMATION

SUCH AS SOCIAL SECURITY NUMBERS, TAX ID NUMBERS, OR BANK ACCOUNT NUMBERS. Consultant understands that State does not have sufficient resources to review and redact confidential information submitted by Consultant. If such confidential information is submitted, Consultant shall have no right of action of any kind against State for the disclosure of such information.

8. PAYMENTS

State will pay Consultant after receipt of Consultant's invoice and determination by State that the invoice and progress report adequately substantiate the Services provided, and the Services were completed in accordance with this Agreement. Payments will not be made if the progress report does not provide adequate substantiation for the Services, or State determines that the Services have not been properly completed. State will make a reasonable effort to pay Consultant within 30 days of receipt of Consultant's invoices.

9. PROMPT PAYMENT CLAUSE

Consultant shall include a "Prompt Payment Clause" as a part of every subcontract for work, including all lower tier subcontracts. The "Prompt Payment Clause" will require progress payments to all subconsultants for all work completed, within twenty (20) calendar days after receipt of progress payments from the State for said work. If Consultant fails to carry out the requirements of the "Prompt Payment Clause" without just cause, it will be considered a material breach of this Agreement. In such situation, State may withhold any payment due to Consultant until all delinquent payments have been made (no interest will be paid for the period that payment was withheld), terminate this Agreement, or any other such remedy as State deems appropriate. Consultant may withhold payment to a subcontractor only for just cause and must notify the State in writing of its intent to withhold payment before actually withholding payment. Consultant shall not withhold, delay, or postpone payment without first receiving written approval from the State.

10. SUSPENSION OF PAYMENTS

When work is suspended on this project, payments shall be suspended until the work resumes or this Agreement is terminated. Consultant shall not be compensated for any work completed or costs incurred on the project after the date of suspension. When work is suspended for convenience, Consultant shall be compensated for work completed, or costs incurred prior to the date of suspension. When work is suspended for cause, payments shall be withheld until all remedial action is completed by Consultant to the satisfaction of State, at Consultant's sole cost.

11. ANNUAL OVERHEAD ADJUSTMENT (TRUE-UP) INVOICES

- A. After State receives Consultant's latest Indirect Cost Rate (ICR) submittal and State establishes an approved ICR for Consultant, it is State's preference that Consultant submit a separate Overhead Adjustment Invoice that reconciles the indirect costs billed during the past fiscal year covered by the latest ICR submittal. If reconciling the indirect costs requires the Consultant to reimburse State for overpayment of indirect costs, Consultant may request reimbursement of additional allowable costs that have not been already reimbursed, provided that the costs were documented and subtracted out on previous invoices. In no circumstance may Consultant request reimbursement of any costs incurred that are not in accordance with Section 4. ALLOWABLE COSTS.
- B. When uploading this invoice to OnBase, append "(OH ADJ)" to the invoice number when populating the invoice number keyword in OnBase. More information regarding Overhead Adjustment Invoices is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.
- C. Consultant shall require Subconsultant(s) to submit Overhead Adjustment Invoices to Consultant consistent with this Section. Consultant must include such subconsultant overhead adjustment invoices when Consultant submits their own invoices to State.

12. FINAL INVOICE, FINAL OVERHEAD (TRUE-UP) INVOICE, AND PAYMENT

- A. Upon completion of the Services under this Agreement, Consultant shall submit their final invoice to include all labor, expenses, and, if applicable, may include the balance of Fee for Profit.
- B. Consultant, and, if applicable, its subconsultant(s), shall review the indirect costs billed to-date to determine if the indirect cost rates (overhead and FCCM) used on prior invoices match the actual indirect cost rates applicable to the time period that the labor was incurred. If cost adjustments are necessary, they should be reflected on an Overhead Adjustment Invoice (**separate from final costs incurred invoice**). Refer to Section 11. OVERHEAD ADJUSTMENT INVOICE. If a particular year's actual overhead has not yet been computed or approved by State, the most recently approved yearly rate should be applied. Consultant shall submit any final Overhead Adjustment Invoice within 90 days of completion of the work under this Agreement, and if such invoice is not timely submitted, State may audit and close the Agreement without accepting any further invoices from

Consultant. More information regarding Overhead Adjustment Invoices is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>.

- C. After receipt of final invoice and Overhead Adjustment Invoice and State has determined that the final invoice and Progress Report adequately substantiate the Services provided and that the Services were completed in accordance with this Agreement, State will pay Consultant. Acceptance of the final payment by Consultant will constitute and operate as a release to State for all claims and liability to Consultant, its representatives, and assigns, for any and all things done, furnished, or relating to the Services rendered by or in connection with this Agreement or any part thereof.

13. AGREEMENT CLOSE-OUT

Upon submitting its final invoice and, if required, a final Overhead Adjustment invoice, the Consultant must complete and submit to State a Notification of Completion Form (NDOT Form 39). The form is generated and submitted electronically through State's OnBase Invoice Workflow System. Instructions for generating and submitting the NDOT Form 39 are available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. Consultant shall submit NDOT 39 Form within 90 days of completion of the work under this Agreement, and if such Form is not timely submitted, State may audit and close the Agreement without accepting any further invoices from Consultant.

14. FEDERAL COST PRINCIPLES

For performance of Services as specified in this Agreement, State will pay Consultant subject to the terms of this Agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulations [48 CFR 31 \(Contract Cost Principles and Procedures\)](#).

15. OUT-OF-SCOPE SERVICES AND CONSULTANT WORK ORDERS

- A. State may request that Consultant provide services that, in the opinion of Consultant, are in addition to or different from those set out in the Scope of Services. When State decides that these out-of-scope services may require an adjustment in costs, Consultant shall provide in writing:
- 1) A description of the out-of-scope services,
 - 2) An explanation of why Consultant believes that the out-of-scope services are not within the original Scope of Services and additional work effort is required,

- 3) An estimate of the cost to complete the out-of-scope services. Consultant must receive written approval from State before proceeding with the out-of-scope services. Before written approval will be given by State, State must determine that the situation meets the following criteria:
 - (a) The out-of-scope services are not within the original Scope of Services and additional work effort is required;
 - (b) The out-of-scope services are within the basic scope of services under which Consultant was selected and Agreement entered; and
 - (c) It is in the best interest of State that the out-of-scope services be performed under this Agreement.

B. Once the need for a modification to the Agreement has been established, the State will prepare a supplemental agreement. If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the State may issue a written notice to proceed prior to completing the supplemental agreement (for non-Federal aid projects) or shall use the process set out below (for Federal aid PE projects):

- 1) The Consultant Work Order (CWO) – NDOT Form 251 shall be used to describe and provide necessary justification for the additional scope of services, effort, the deliverables, modification of schedule, and to document the cost of additional services. The CWO form is available on the State's website at <http://dot.nebraska.gov/business-center/consultant/>. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin. The agreement will be supplemented after one or more CWOs have been authorized and approved for funding.

16. TERMINATION COST ADJUSTMENT

If the Agreement is terminated prior to project completion, State will compare the percentage of work actually completed by Consultant, to the total amount of work contemplated by this Agreement. This comparison will result in a payment by the State for any underpayment, no adjustment, or a billing to Consultant for overpayment. The State's final audit may result in an additional cost adjustment.

17. AUDIT AND FINAL COST ADJUSTMENT

Upon State's determination that Consultant has completed Services under this Agreement, State, or its authorized representative, may complete an audit review of the payments made under this Agreement. The Parties understand that the audit may require an adjustment of the

payments made under this Agreement. Consultant agrees to reimburse State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

18. CONSULTANT COST RECORD RETENTION

Consultant, and all its subconsultants or subcontractors, shall maintain originals or copies of any document required to be completed in this Agreement, that substantiate any expense incurred, or changes any legal obligations for three (3) years from the date of **WHEN FEDERAL FUNDS USED IN PE** final cost settlement by FHWA and **END USE WHEN FEDERAL FUNDS USED IN PE** project closeout by the State.

Documents include, but are not limited to: written approvals; time reports; detailed receipts; invoices; transportation costs; mileage; lodging costs; ~~cost of meals~~; all NDOT forms including NDOT cost breakdown form and NDOT travel form; books; papers; electronic mail; letters; accounting records; supplemental agreements; work change orders; or other evidence pertaining to any cost incurred.

Such materials will be available for inspection by the State, FHWA, or any authorized representative of the federal government, and copies of any document(s) will be furnished when requested.